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COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C §§ 1983

FEB 13 A 10:32

Name HERMOSILLO Jose H RICHARD W. WIEKING

(Last)

(First)

(Initial)

CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.Prisoner Number CRE-216 / 08001367Institutional Address 885 N. SAN PEDRO ST.SAN JOSE, CA 95110UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAJOSE HORACE HERMOSILLO

(Enter the full name of plaintiff in this action.)

C08 00915JF

Case No.

(To be provided by the clerk of court)

vs.
SANTA CLARA COUNTY / S.C.J.
CPT. D. SEPULVEDASGT. P. CORSO #2348OFF. KLB #1778OFF. WHITE #1624

(Enter the full name of the defendant(s) in this action))

COMPLAINT UNDER THE
CIVIL RIGHTS ACT,
42 U.S.C §§ 1983

[All questions on this complaint form must be answered in order for your action to proceed..]

I. Exhaustion of Administrative Remedies

[Note: You must exhaust your administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.]

A. Place of present confinement SANTA CLARA CO. MAIN JAIL

B. Is there a grievance procedure in this institution?

YES ☒ NO ()

C. Did you present the facts in your complaint for review through the grievance procedure?

YES ☒ NO ()

D. If your answer is YES, list the appeal number and the date and result of the

PRIMARY APPEAL # 69071

COMPLAINT

- 1 -

CJF

appeal at each level of review. If you did not pursue a certain level of appeal, explain why.

1. Informal appeal # 69071 3-1-07 HANDED GRIEVANCE TO SGT. HERNANDEZ DUE TO PREVIOUS CURTAILING AND UNDERMINING OF MY CLAIMS 2. First formal level # 69071 3-28-07 RECEIVED BY OFF. KOLB AND FORWARDED TO LEVEL II

3. Second formal level # 69071 4-5-07 RECEIVED BY SGT. SIMONSON #1657 STATED MY CLAIMS HAD NO MERIT AND REFERED TO LEVEL III 4. Third formal level # 69071 4-19-07 RECEIVED BY LT. M. CONNER #209 WHOM CONCURRED WITH SGT SIMONSON'S DISPOSITION ABOVE.

E. Is the last level to which you appealed the highest level of appeal available to

you? I APPEALED TO THE MAIN JAIL COMPLEX COMMANDER CAPTAIN DAVID SEPULVEDA WHOM YES () NO (X) STATED MY CLAIM WAS DISMISSED DUE TO LACK OF EVIDENCE.

F. If you did not present your claim for review through the grievance procedure,

explain why.

N/A

II. Parties

A. Write your name and your present address. Do the same for additional plaintiffs, if any.

JOSE HORACE HERMOSILLO

885 N. SAN PEDRO ST.

SAN JOSE, CA 95110

B. Write the full name of each defendant, his or her official position, and his or her

place of employment.

SANTA CLARA COUNTY / S.C.C.J.

CPT. DAVID SEPULVADA MAIN JAIL COMPLEX COMMANDER

P. CORSO #2348 INTELL/CLASS SGT. S.C.C. MAIN JAIL

KOLB # 1778 CORRECTIONAL OFFICER S.C.C. MAIN JAIL

WHITE # 1624 INTELL/CLASS OFFICER S.C.C. JAIL III.

Statement of Claim

State here as briefly as possible the facts of your case. Be sure to describe how each defendant is involved and to include dates, when possible. Do not give any legal arguments or cite any cases or statutes. If you have more than one claim, each claim should be set forth in a separate numbered paragraph.

FROM 8-25-05 TO 3-29-07 OFFICER KOLB HAS
PERSISTENTLY HARASSED, THREATEND, BELITTIED AND
INTIMIDATED ME IN RETALIATION FOR REFUSING TO
COOPERATE AS A JAIL HOUSE INFORMANT. UPON
FILING A GRIEVANCE I WAS SUBJECTED TO
REPRISAL TO THE EXTENT OFFICER KOLB TOOK AN
AGRESSIVE BELIGERANT STANCE AGAINST ME ON 3-2-07
ON 3-29-07 OFF. WHITE REITERATED KOLB'S PHYSICAL
THREAT OF VIOLENCE TO PLACE ME IN PROTECTIVE
CUSTODY BY FORCE VIA EXTRACTION TEAM UNLESS I
COOPERATED AS AN INFORMANT

ON 4-3-07 SGT CORSO INTELL/CLASS TOOK REPRISAL
AGAINST ME FOR REPORTING BOTH OFF. WHITE AND KOLB
CONTINUED ON PAGE 3-A

IV. Relief

Your complaint cannot go forward unless you request specific relief. State briefly exactly what you want the court to do for you. Make no legal arguments; cite no cases or statutes.

THE COURT ISSUE A PRELIMINARY INJUNCTION AGAINST S.C.C.J

1 CLASS/INTELL USE OF HARRASSMENT, THREATS AND
2 INTIMIDATION ON INMATES REFUSING TO COOPERATE AS
3 TAIL HOUSE INFORMANTS, FURTHERMORE I ASK THE COURT
4 HOLD S.C. CO. ACCOUNTABLE BY ORDERING IT TAKE THE NECES-
5 SARY STEPS TO BRING S.C.C.J. CLASS/INTELL DEPT. INTO COMPLIANCE
6 WITH THE LAW BY SETTING NEW POLICY PROHIBITING SUCH
7 MALICIOUS PRACTICES AGAINST INMATES CIVIL RIGHTS

I declare under penalty of perjury that the foregoing is true and correct.

8
9 Signed this 31ST day of JANUARY, 20 08

10
11 Joe Hermosillo
12 (Plaintiff's signature)

County of Santa Clara

Department of Correction

180 West Hedding Street
San Jose, California 95110-1772
(408) 808-3640 FAX 288-8271

COPY



Edward C. Flores
Chief of Correction

May 8, 2007

Mr. Jose Hermosillo #06071895
885 N. San Pedro Street
San Jose, CA 95110

Dear Mr. Hermosillo:

I am in receipt of your 5-page grievance dated March 1, 2007, concerning your complaint about Officer Kolb.

After conducting a lengthy and thorough investigation into the facts, no evidence was found to substantiate your complaint. As such, I consider the matter closed.

Sincerely,

Captain David Sepulveda
Main Jail Complex Commander

DS/gw

c: Internal Affairs Unit
Sgt. Corso, Classification Unit

I have received your
May 29th letter regarding
this same subject.
As, I have already advised
you, the matter is closed.
Capt. Sepulveda
6/4/07

MAY, 29 2007

CPT. DAVID SEPULVALA
150 W. HEDDING ST.
SAN JOSE, CA. 95110

SUBJECT: 2ND COPY OF LETTER SENT
TO YOU ON MAY 7, 2007.

DEAR: CPT. SEPULVALA

THE LEGALITY OF YOUR CLASS, INTELL DEPARTM-
ENT POLICIES AND PROCEDURES IS IN QUESTION.
THE USE OF HARASSMENT, INTIMIDATION AND REPRISAL
TO COERCE INMATES INTO COOPERATING AS JAIL HOUSE
INFORMANTS INFRINGES OUR CIVIL RIGHT AGAINST
CRUEL AND UNUSUALL PUNISHMENT U.S. CONST. 8TH AM-
ENDMENT. I DEMAND S.C.C.J. TAKE THE NECESSARY
STEPS TO BRING THE INTELL/CLASS DEPT. INTO COMPLI-
ANCE WITH THE LAW. BY SETTING NEW POLICY PRO-
HIBITING SUCH MALICIOUS PRACTICES AND REQUIRE ALL
STAFF BE TRAINED ON IT.

IT SHOULD BE NOTED OFFICER KOLB AS WELL AS THE
INTELL/CLASS DEPT. HARASSMENT AND SUBSEQUENT REPRISAL
STEMS FROM THE INABILITY TO FORCE ME INTO COOPERATING
AS AN INFORMANT FOR THE SANTA CLARA SPECIAL ENFORCEM-
ENT TEAM ON 8-26-05 AND WITH CLASS/INTELL THEREAFTER.

SIR ON 3-1-07 I FILED A HARASSMENT GRIEVANCE AGAINST C.O. KOLB. I PERSONALLY HANDED TO SGT. HERNANDEZ WHOM AGREED TO DELIVER DIRECTLY TO YOU. REASON BEING, CLASS/INTELL PREVIOUS CURTAILING OF MY CLAIMS. SEE GRIEVANCE #68124 AND 68196, FURTHERMORE GRIEVANCE # 67757 WHERE UPON SGT. CORSO UNDERMINED MY CLAIM SUPPORT MY COURSE OF ACTION.

ON 3-2-07 AT APPROX. 1:00PM WHILE WAITING TO BE TRANSPORTED TO COURT C.O. KOLB TOOK REPRISAL AGAINST ME FOR THE ABOVE FILED GRIEVANCE, BY APPROCHING ME AT VISIT BOOTH #6 ON THE 4TH FLOOR AND THREATENED ME BY TAKING A BELLIGERANT STANCE. HE WENT ON TO SHOUT DIRECTLY AT ME 3X'S. "YOU WANT TO TALK SHIT, YOU STILL TALKING SHIT" "YOU'LL SEE"!! CAUSING ME TO FEAR FOR MY SAFETY RESULTING IN EMOTIONAL DISTRESS AND MENTAL ANGUISH. IT SHOULD BE NOTED THIS TOOK PLACE IN THE PRESENCE OF A FELLOW INMATE AND OFFICERS WHITLOCK AND GONZALEZ.

ON OR ABOUT MID MARCH SGT. SIMONSON INTERVIEWED ME REGARDING GRIEVANCE #69071. AT THIS TIME I MADE HIM AWARE OF OFF. KOLB'S THREAT/REPRISAL. TO WHICH HE INDICATED THAT HE WOULD INVESTIGATE BOTH MATTERS, STATING I WOULD RECEIVE A WRITTEN LETTER RESPONSE WITHIN A WEEK. NEITHER WAS RECEIVED UNTILL A MONTH AFTER I WAS TRICKED/COERCED INTO P.C.

ON 3-29-07 OFF JAUENDERS DECEIVED ME INTO EXITING MY CELL FOR AN ATTORNEY INTERVIEW, REALIZING IT WAS A RUSE BY CLASS/INTELL I RESPECTFULLY ASKED TO BE RETURNED TO MY CELL AS I HAD NOTHING TO SAY TO OFF. WHITE. THUS I TURNED TOWARDS 4-B-SIDE DOOR TO WHICH OFF. —

SAUNDERS RESPONDED BY JERKING ME VIOLENTLY BY MY SHIRT. THIS LAYING ON OF HANDS WAS UNCALLED FOR AS I DID NOT POSE ANY SAFETY RISK TO THE STAFF. AT THIS POINT OFF WHITE THREATENED TO PLACE ME INTO P.C. VIA PHYSICAL HARM IF I REFUSED TO COOPERATE.

LATER THAT AFTERNOON OFF KOLB REVERTED TO INTIMIDATION OF ME, BY SNEERING AND STARING ME DOWN WHILE WORKING THE DESK DANNEL DURING CHOW DISTRIBUTION. HE WENT ON TO MOCK ME WITH CONDESCENDING LAUGHTER. I FILED A GRIEVANCE ON 3-29-07 AND HANDED TO SGT HERNANDEZ ONCE AGAIN FOR REASONS ALREADY STATED ABOVE. IT HAS BEEN OVER (2) MONTHS AND THIS GRIEVANCE REMAINS UNANSWERED. I THEREFORE HANDED SAID GRIEVANCE TO L.T. RODRIGUEZ FOR COPYING ON 5-22-07.

ON 4-19-07 I RECEIVED A RECEIP FOR GRIEVANCE # 69071 STATING MY CLAIMS HAD NO MERIT. ITS APPARENT THIS ADMINISTRATION PURPOSELY DELAYED INVESTIGATION INTO MY CLAIMS OF HARASSMENT AND SUBSEQUENT REPRIAL UNTILL AFTER MY PLACEMENT TO P.C. ON 4-3-07 VIA WAY OF RUSE AND DECEPTION IN AN EFFORT TO JUSTIFY CLASS/INTEL REPREHENSIBLE ACTIONS. SUDDENLY VOICING CONCERN FOR MY SAFETY. IT SHOULD BE NOTED THAT WHILE I ENDURED THE ABUSIVE MISTREATMENT BY THESE OFFICERS THIS ADMINISTRATION WAS NOT CONCERNED WITH MY SAFETY/ AND REMAINED IN G.P. HOWEVER ONCE MY FAMILY BECAME INVOLVED BY CONTACTING INTERNAL AFFAIRS CLASS/INTEL SGT.-

CORSO REVERTED TO LIES AND MANIPULATION TO COVER UP HIS OFFICERS AND HIS VERY OWN GROSS MISCONDUCT BY ORDERING ME PLACED INTO P.C. AND LIEING IN HIS RESponce TO MY GRIEVANCE # 69007 AND # 69201, DELIBERATLY MISPOU-
TING ME.

ON 4-3-07 OFF. SAUNDERS THREATENED ME WITH PHYSICAL FORCE OF VIOLENCE IF I REFUSED TO INTERVIEW WITH SGT CORSO. I ASKED SGT CORSO WHY WAS I THREATENED TO BE EXTRACTED IF I REFUSED TO INTERVIEW. HIS RESponce WAS " ITS NOT A THREAT, AND WE WILL BEAT THE SHIT OUT OF YOU JUST AS GOOD IF NOT BETTER THAN ANY INMATES COULD."

PLEASE NOTE OFF. BABASA COOROBORATED SAID PLAN TO EXTRACT ME AS HE INFORMED ME ON 4-9-07 THAT HE WAS IN FACT SUITING UP THAT DAY. AND WAS GLAD I HAD RELENTED.

SGT CORSO WENT ON TO SAY DUE TO MY CALL TO I.A. AS WELL AS MY SISTERS ON 4-2-07 VOICING A CONCERN FOR MY SAFETY HIS ACTIONS WERE JUSTIFIED. I DISAGREE AS THE CALLS WAS FOR FEAR AND CONCERN OF THIS VERY ROGUE BEHAVIOR AND REPRISAL I AM SUBJECTED TO BY SGT CORSO AND HIS OFFICERS.

I REQUESTED A THOROUGH INVESTIGATION BE CONDUCTED ON THE AFOREMENTIONED FACTS, INCLUDING CALLS PLACED TO I.A. ON 3-30-07, 4-2-07 AND 4-9-07 WHERE UPON MR. KELTER EXCISED CRITICAL COOROBORATING FACTS ABOUT MY HARASSMENT CLAIM. TO NO AVAIL, AS THIS ADMINISTRATION REFUSES TO HOLD THESE OFFICERS ACCOUNTABLE.

I WOULD LIKE TO REITERATE THAT YOUR SUBORDINATES MISCONDUCT CONSTITUTE AN ENGREGIOUS ABUSE OF POWER. THE FAILURE TO RESPOND TO MY GRIEVANCE DATED 3-29-07 ON KOIBS REPRISAL AND THE MISHANDLING OF THIS ENTIRE INVESTIGATION AMOUNTS TO A DISGRACEFULL ATTEMPT TO COVER UP CORRUPTION AND BIATANT VIOLATION OF MY CIVIL RIGHTS. AS SUCH WHAT I'M LOOKING TO ACCOMPLISH BY THE LAWSUIT IS TO HAVE THESE OFFICERS DISCIPLINED. BY YOUR FAILURE TO PUNISH THEM YOU ARE ENCOURAGING FUTURE MISCONDUCT LIKE THIS, NOT ONLY BY THESE OFFICERS BUT OTHERS AS WELL.

SINCERELY,

Joe Lenciello

JS 44 - CAND (Rev. 11/04)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil cover sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I. (a) PLAINTIFFS

HERMOSILLO JOSE H.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

S.C.C.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

IN PRO PER

DEFENDANTS

SANTA CLARA COUNTY / S.C. COUNTY JAIL
S.C.C.J. CPT. D. SEPULVADA
S.C.C.J. SGT. P. CORSO #2348
S.C.C.J. OFF. KOLB #1778
S.C.C.J. OFF. WHITE #1624

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

S.C.C.

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

C08 00915 JF
UNKNOWN**II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)**☐ 1 U.S. Government Plaintiff☒ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☐ 4 Diversity (Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)**

(For diversity cases only)

Citizen of This State

PTF DEF
☐ 1 ☐ 1

Incorporated or Principal Place of Business in This State

PTF DEF
☐ 4 ☐ 4

Citizen of Another State

☐ 2 ☐ 2

Incorporated and Principal Place of Business in Another State

☐ 5 ☐ 5

Citizen or Subject of a Foreign Country

☐ 3 ☐ 3

Foreign Nation

☐ 6 ☐ 6**IV. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

☒ Original Proceeding☐ Removed from State Court☐ Remanded from Appellate Court☐ Reinstated or Reopened☐ Transferred from Another district (specify)☐ Multidistrict Litigation☐ Appeal to District Judge from Magistrate Judgment**V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)****CONTRACT**

- ☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

TORTS**PERSONAL INJURY**

- ☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault Libel & Slander
☐ 330 Federal Employees Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury

PERSONAL INJURY

- ☐ 362 Personal Injury Med Malpractice
☐ 365 Personal Injury Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY

- ☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY

- ☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 RR & Truck
☐ 650 Airline Regs
☐ 660 Occupational Safety/Health
☐ 690 Other

LABOR

- ☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt Relations
☐ 730 Labor/Mgmt Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl.Ret. Inc. Security Act

BANKRUPTCY

- ☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS

- ☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY

- ☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSD Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS

- ☐ 870 Taxes (US Plaintiff or Defendant)
☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES

- ☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC Rates/etc.
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 810 Selective Service
☐ 850 Securities/Commodities/Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 891 Agricultural Acts
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Information Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 960 Constitutionality of State Statutes
☐ 890 Other Statutory Actions

REAL PROPERTY

- ☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

CIVIL RIGHTS

- ☐ 441 Voting
☐ 442 Employment
☐ 443 Housing
☐ 444 Welfare
☐ 440 Other Civil Rights
☐ 445 Amer w/ disab - Empl
☐ 446 Amer w/ disab - Other
☐ 480 Consumer Credit
☐ 490 Cable/Satellite TV

PRISONER PETITIONS

- ☐ 610 Motion to Vacate Sentence Habeas Corpus:
☐ 630 General
☐ 635 Death Penalty
☐ 640 Mandamus & Other
☒ 650 Civil Rights
☐ 655 Prison Condition

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY) U.S. CONSTITUTION AMEND. 8, CRUEL UNUSUAL PUNISHMENT AND XIV. I WAS REPEATEDLY HARASSED IN RETALIATION FOR REFUSING TO COOPERATE AS AN INFORMANT FROM 8-25-05 TO 4-3-07 I WAS SUBJECTED TO THREATS OF VIOLENCE FROM CLASS/INTEL PERSONNEL FOR SAID REFUSAL AND ULTIMATELY ENDED WITH PLACEMENT INTO PROTECTIVE CUSTODY AGAINST MY WILL VIA WAY OF RUSE AND COERCION. FURTHER SUBJECTING ME TO UNLAWFUL FIRST AMENDMENT RETALIATION DUE TO MY DECISION TO ENGAGE IN PROTECTED CONDUCT.

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION.

DEMAND \$

☒ CHECK YES only if demanded in complaint:

UNDER F.R.C.P. 23 PRELIMINARY INJUNCTION.

JURY DEMAND: ☒ YES ☐ NO**VIII. RELATED CASE(S) IF ANY RE-FILE**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

N/A

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)☒ SAN FRANCISCO/OAKLAND☒ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

PLEASE NOTE I'M RE FILING
DUE TO ORDER OF DISMISSAL
NO. C D7-3163 JF (PR) DATED 1-17-08
WITH OUT PREJUDICE.